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Paper No. 6

Ronald B. Sherer  
103 South Shaffer Drive  
New Freedom, PA 17349

AUG 21 2003

In re Application of:	:	
ELKIS <i>et al.</i>	:	
Application No. 09/708,156	:	DECISION
Filed: November 08, 2000	:	
Attorney Docket No. Ward 00-100	:	

This is a decision on the petition filed June 10, 2003, and supplemented on August 06, 2003, to revive the above identified application. The petition has been treated under 37 CFR § 1.181, to withdraw the holding of abandonment in the above identified application. No petition fee is required.

The request is **GRANTED**.

The application was held abandoned for the failure to timely file a response to the Office action mailed on September 12, 2002. A Notice of Abandonment was mailed on May 27, 2003.

Petitioner asserts that on September 20, 2002, a response including an amendment and election was timely filed in the above-identified application. To support this assertion, petitioner has submitted a copy of a response bearing a certificate under 37 CFR 1.8(a), signed and dated September 20, 2002, and a statement under 37 CFR § 1.8(b)(3), from the practitioner which attests, on a personal knowledge basis, that the response was deposited with the United States Postal Service On May 03, 2002.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, 37 CFR § 1.8(b), provides for accepting a correspondence as being timely filed if it was mailed or transmitted in accordance with 37 CFR § 1.8(a), and is reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such

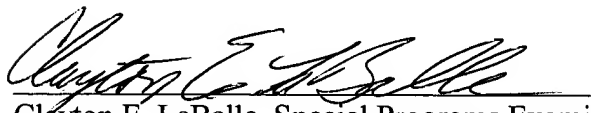
correspondence: (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence; (2) supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition meets the conditions set forth by 37 CFR 1.8, for establishing the previous timely filing of the response. Accordingly, the petition is **granted**. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The copy of the response submitted with the petition on June 10, 2003, is accepted since the response originally submitted was apparently lost.

The application file is being forwarded to the Technology Center 2800 support staff for entry of the response. From there, the application will be forwarded to the examiner for prompt appropriate action.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (703) 308-4858.

  
Clayton E. LaBalle, Special Programs Examiner  
Technology Center 2800  
Semiconductors, Electrical and Optical  
Systems and Components